

This record is a partial extract of the original cable. The full text of the original cable is not available.

UNCLAS SECTION 01 OF 06 MANILA 005927

SIPDIS

SENSITIVE

STATE FOR EB/ESC/TFS, INL AND EAP/MTS
TREASURY FOR FINCEN
JUSTICE FOR OIA AND AFMLS
DEA FOR FO and OILS AND OFFICE OF DIVERSION CONTROL

E.O. 12958: N/A

TAGS: EFIN KTFN PTER SNAR KCRM KSEP RP

SUBJECT: PHILIPPINES 2005 INSCR PART II: FINANCIAL CRIMES AND MONEY LAUNDERING

REF: STATE 210324

Sensitive but Unclassified - Not for Internet - Protect Accordingly.

¶1. (U) The following text is the proposed International Narcotics Control Strategy Report, Part II, Financial Crimes and Money Laundering, for the Philippines for 2005-2006. Post used the questions in reftel as the basis for collecting information and assessing the current situation for the country report. We will e-mail this text as a word document to INL to facilitate the review process.

Begin Text:

¶2. (SBU) The Philippines is a regional financial center, though it is not a major international offshore financial center like Hong Kong or Singapore. There are nine Offshore Banking Units (OBUs) established since former President Marcos issued a decree in 1976 authorizing their formation. At present, OBUs account for less than two percent of total banking system assets in the country. The Bangko Sentral ng Pilipinas (BSP), the Philippine Central Bank, which regulates onshore banking, exercises regulatory supervision over OBUs and requires them to meet reporting provisions and other banking rules and regulations. In addition to registering with the Securities and Exchange Commission (SEC), financial institutions must obtain a secondary license from the BSP subject to relatively stringent standards that would make it difficult to establish shell companies in financial services of this nature. For example, a financial institution operating an OBU must be physically present in the Philippines. Anonymous directors and trustees are not allowed. The SEC does not permit the issuance of bearer shares for banks and other companies.

¶3. (SBU) In the past few years, the illegal drug trade in the Philippines has reportedly evolved into a billion-dollar industry. The Philippines continues to experience an increase in foreign organized criminal activity from China, Hong Kong, and Taiwan. Some insurgency groups operating in the Philippines reportedly fund their activities, in part, through the trafficking of narcotics and arms and engage in money laundering through alleged ties to organized crime. The proceeds of corrupt activities by government officials are also a source of laundered funds. Most of the narcotics trafficking transiting through the Philippines is exchanged using letters of credit. There is little cash and negligible amounts of U.S. dollars used in the transactions, except for the small amounts of narcotics that make it all the way to the United States for street sale. Drugs circulated within the Philippines are usually exchanged for local currency.

¶4. (SBU) The Government of the Republic of the Philippines (GRP) established an anti-money laundering and counter-terrorist financing regime by passing Republic Act 9160 -- the Anti-Money Laundering Act (AMLA) of 2001. The GRP enacted Implementing Rules and Regulations (IRR) for the AMLA in April 2002. The AMLA criminalizes money laundering, an offense defined to include the conduct of activity involving the proceeds from unlawful activity in any one of 14 major categories of crimes, and imposes penalties that include a term of imprisonment of up to seven years.

¶5. (SBU) The AMLA also established the Anti-Money Laundering Council (AMLC) as the country's financial intelligence unit (FIU). The Council is composed of the Governor of the BSP as Chairman, and the Commissioner of the Insurance Commission and the Chairman of the Securities and Exchange Commission as Members. The AMLC is supported by a Secretariat headed by an Executive Director who has a term of five years and must be a

lawyer. All the members of the Secretariat must have at least five years experience in the BSP, the SEC, or the Insurance Commission. They all hold full-time permanent positions in the BSP upon their appointment. By law, the AMLC Secretariat is an independent agency responsible for receiving, maintaining, analyzing, and evaluating covered and suspicious transactions, and providing advice and assistance to relevant authorities.

16. (SBU) The AMLC's role goes well beyond traditional FIU responsibilities and includes the investigation and prosecution of money laundering. AMLC has the ability to seize terrorist assets involved in money laundering on behalf of the Republic of the Philippines after a money laundering offense has been proven beyond a reasonable doubt. In order to freeze assets allegedly connected to money laundering, the AMLC must establish probable cause that the funds relate to an offense enumerated in the Act, such as terrorism. The Court of Appeals then may freeze the bank account for 20 days. The AMLC may apply to extend a freeze order prior to its expiration. The AMLC is required to obtain a court order to examine bank records for activities not listed in the Act. Serious offenses listed in the AMLA that do not require a court order include kidnapping for ransom, narcotics trafficking, and terrorism-related crimes.

17. (SBU) In March 2003, the GRP enacted amendments to the Anti-Money Laundering Act under Republic Act 9194 that do the following: establishes the threshold amount for covered transactions (cash or other equivalent monetary instruments) at 500,000 pesos (approximately \$9,000) within one (1) banking day; requires financial institutions to report suspicious transactions, regardless of amount; authorizes the BSP to examine any particular deposit or investment with any bank or non-bank institution in the course of a periodic or special BSP examination to ensure institutional compliance with the AMLA; and, permits the AMLC to examine particular deposits or investments opened or created before the AMLA. The GRP has made impressive progress enhancing and implementing its amended AMLA. Through the end of October 2005, the AMLC had received 1760 Suspicious Transaction Reports (STRs) involving 8144 suspicious transactions, and had received Covered Transaction Reports (CTRIs) involving over forty-four million covered transactions. After completing the first phase of its information technology upgrades in 2004, AMLC is in the process of acquiring software to implement link analysis and visualization to enhance its ability to produce information in graphic form from the CTRIs and STRs filed electronically by regulated institutions. AMLC has not yet defined the requirements for the data mining component of phase two that would allow it to most effectively search its data base and generating patterns and leads for investigation.

18. (SBU) Over the last year, the Philippines continued to improve its ability to track, seize, and block terrorist assets. Under the AMLA, the AMLC has authority to freeze funds and block financial transactions identified with or traced to designated terrorist organizations or individuals engaged in the financing of terrorism. The GRP is quick to respond when new terrorist entities are added to the consolidated list of terrorist individuals and entities subject to sanctions pursuant to United Nations Security Council Resolution 1267 and subsequent resolutions. Upon notification that the UN 1267 Sanctions Committee has approved an additional name to the list, the AMLC takes immediate steps to inform the local banks and issue orders to freeze the assets in the banking system. As institutions covered under the AMLA and subject to related BSP Circulars, local and foreign banks in the Philippines readily comply with the requests. Under the AMLA and the Bank Secrecy Act, officers, employees, representatives, agents, consultants, and associates of financial institutions are exempt from civil or criminal prosecution for reporting covered transactions. These institutions must maintain and store records of transactions for a period of five years, extending beyond the date of account or bank closure. The AMLC has frozen funds at the request of the UN Security Council, the United States, and other foreign governments. Through November 2005, the AMLC has frozen funds in excess of 366 million Philippine pesos and an additional 2.7 million U.S. dollars.

19. (SBU) The Philippines has no comprehensive legislation pertaining to civil and criminal forfeiture. Various government authorities, including the Bureau of Customs and the Philippine National Police, have the ability to temporarily seize property obtained during a criminal activity. Money and property must be included in the indictment, however, to permit forfeiture. Because ownership is difficult to determine in these

cases, assets are rarely included in the indictment and are rarely forfeited. The country has no separate legislation covering civil and administrative forfeiture. Under the AMLA, the AMLC has the authority to seize assets involved in a money laundering operation that may end up as forfeited property after conviction, even if an otherwise legitimate business. In December 2005, the Supreme Court issued a new criminal procedure rule covering civil forfeiture, asset preservation, and freeze orders. The new rule provides a way to preserve assets prior to any forfeiture action and lists the procedures to be followed during the action. The rules also contain clear directions to the AMLC and the Court of Appeals on the issuance of freeze orders for assets under investigation that had been confused by changes in the amendment to the AMLA in 2003.

¶10. (SBU) In 2005, several multilateral organizations recognized the progress achieved by the GRP in improving its anti-money laundering regime and addressing former vulnerabilities. The Financial Action Task Force (FATF), an international body formed by the G-7 industrialized countries and dedicated to detecting and preventing money laundering worldwide, removed the Philippines from its list of Non-Cooperating Countries and Territories (NCCT) in February 2005. In addition, the Egmont Group, an international coalition of leading Financial Intelligence Units (FIUs) working to coordinate efforts to combat terrorist financing, accepted AMLC's membership application in July 2005. Besides working through the Egmont Group to enhance asset tracing on a multilateral basis, the AMLC has entered into bilateral Memorandum of Understanding with counterpart FIUs in Korea, Malaysia, Indonesia, and Thailand, among others.

¶11. (SBU) There are currently 88 prosecutions underway in the Philippine court system that involved AMLC investigations or prosecutions, including 34 for money laundering, 24 for civil forfeiture, and the rest pertaining to freeze orders and bank inquiries. Although some of these cases may conclude shortly, the Philippines still has no conviction to date for money laundering offenses. AMLC investigators, however, played a role in a cooperative effort between U.S. and Philippine law enforcement agencies that resulted in the successful conviction of a high-ranking General before a military court martial board. The Philippines must ensure that prosecutions for money laundering offenses lead to regular, timely, and well-publicized convictions to deter criminal activity.

¶12. (SBU) Questions remain in the Philippine anti-money laundering regime about whether financial institutions comply fully with AMLA provisions. For example, the BSP does not have a mechanism in place to ensure that the financial community is adhering to the reporting requirements. Banks in more distant parts of the country, especially Mindanao where terrorist groups operate more freely, may feel threatened and inhibited from providing information about financial transactions requested by AMLC. In addition, there is a concern that issues identified by FATF regarding bank secrecy have not been completely resolved. While bank secrecy provisions to the BSP's supervisory functions were lifted in Section 11 of the AMLA, implementation appears to be incomplete. Due to Philippine "privacy issues," examiners of the BSP are not allowed to review documents held by covered institutions in order to determine if the covered institutions are complying with the reporting requirement. They are only allowed to ask AMLC, as a result of their examination, if an STR has been filed. If AMLC determines one was not filed, then it has the responsibility to make inquiries of the covered institution. This process is slow and cumbersome; AMLC is working with the BSP to find ways of streamlining the process.

¶13. (SBU) The Philippines is a founding member of the Asia/Pacific Group on Money Laundering, a multilateral organization dedicated to assisting countries in the Asia Pacific region improve their capabilities to track and seize assets and enhance regional efforts to combat money laundering. In particular, the Philippines is a party to the 1988 UN Drug Convention and the Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances. The GRP has signed and ratified all 12 international conventions and protocols related to terrorism, including the UN Convention against Transnational Organized Crime and the 1999 International Convention for the Suppression of the Financing of Terrorism. The Philippines and the United States have a Mutual Legal Assistance Treaty that entered into force in 1996. AMLC has responded promptly to 120 requests for assistance from the U.S. and other countries and was commended by the United Kingdom for its assistance on a case in 2004. In turn, AMLC has made 70 requests for

mutual assistance from foreign jurisdictions. Post is unaware of any refusal on the part of the GRP to cooperate with foreign governments or FIUs related to the investigation of financial crimes.

¶14. (SBU) For several years, the GRP has realized the need to enact and implement an Anti-Terrorism Law that, among other things, would define and criminalize terrorism and terrorist financing, and give military and law enforcement entities greater tools to detect and interdict terrorist activity. President Arroyo declared in her State of the Nation address in June 2005 that passage of such a law was one of her priorities for the remainder of the year. The Philippine legislature took steps to achieve that result in autumn 2005 in consolidating bills and bringing them to the floor for full consideration. The Senate tabled its version of an Anti-Terrorism Bill (SB 2137) in October and the House calendared its own bill (HB 4839) in November. The Senate and House held hearings in late 2005; the bill passed its second reading in the House in December with the third and final reading expected in mid-January 2006. The GRP remains optimistic that both houses will pass a comprehensive law addressing terrorism in 2006. In the absence of an Anti-Terrorism Law, the AMLC is able to continue freezing funds and transactions identified with or traced to designated terrorist organizations and/or individuals upon request of the United Nations Security Council, the U.S., and other foreign governments.

¶15. (SBU) Another important development in 2005 was the AMLC's effectiveness in bringing the numerous foreign exchange offices in the country under the money laundering provisions. The Monetary Board issued a decision in February 2005 defining the 15,000 exchange houses as financial institutions and instituting a new licensing system to bring them under the provisions of the AMLA. Under this decision, all exchange dealers were to receive training from the AMLC by July 2005 to obtain licenses and ensure compliance with the Act. With so many dealers and continued misunderstanding about the new regulations, only 2500 exchange dealers were trained and registered by the end of July. Training teams from the AMLC have held over 1000 classes for dealers and bankers throughout the country to implement this decision. By the end of November, an estimated half of the foreign exchange offices still in operation have received the mandatory training and been registered. This requirement reduced the number of foreign exchange dealers dramatically, perhaps down to 7500, as less reputable offices chose to close down rather than seek licensing.

¶16. (SBU) There are still several sectors operating outside of AMLC control, under the AMLA as revised. Although the AMLA specifically covers exchange houses, insurance companies, and casinos, it does not cover stockbrokers or accountants. Although covered transactions for which AMLC solicits reports include asset transfers, the law does not require direct oversight of car dealers and sales of construction equipment, which are emerging as creative ways to launder money and avoid the reporting requirement. Although the AMLC has the authority to request the chain of casinos operated by the state-owned Philippine Amusement and Gaming Corporation (PAGCOR) to submit covered and suspicious transaction reports, it has not yet done so. There is increasing recognition that the nearly 20 casinos nationwide offer abundant opportunity for money laundering, especially with many of these casinos catering to international clientele arriving on charter flights from around Asia. Several of these gambling facilities are located near small provincial international airports that may have less rigid enforcement procedures and standards for cash smuggling. PAGCOR is the sole franchisee in the country for all games of chance, including lotteries conducted through cell phones. At present, there are no offshore casinos or internet gaming sites. The U.S. Treasury Department is arranging the visit of a team with expertise in Las Vegas to conduct a series of workshops with GRP officials in February 2006 on money laundering in casinos.

¶17. (SBU) Despite the efforts of the GRP authorities to publicize regulations and enforce penalties, cash smuggling remains a major concern for the Philippines. Although there is no limit on the amount of foreign currency an individual or entity can bring into or take out of the country, any amount in excess of \$10,000 equivalent must be declared upon arrival or departure. Based on the amount of foreign currency exchanged and expended, there is systematic abuse of the currency declaration requirements and a large amount of unreported cash entering the Philippines. A training seminar that the U.S. Departments of State and Homeland Security plan to conduct jointly in Manila in late January 2006 is intended further to raise awareness about the problem of bulk cash smuggling and assist law enforcement and

finance officers investigate and address the problem.

¶18. (SBU) The problem of cash smuggling is exacerbated by the large volume of foreign currency remitted to the Philippines by Overseas Filipino Workers (OFW). The amount of remitted funds grew by 25% during the first ten months of 2005, and should exceed \$10 billion for the year, equal to 11% of GDP. The BSP estimates that an additional \$2-3 billion is remitted outside the formal banking system. Most of these funds are brought in person by OFWs or by designated individuals on their return home and not through any alternative remittance system. Since most of these funds enter the country in smaller quantities than \$10,000, there is no declaration requirement and the amounts are difficult to calculate. The GRP encourages local banks to set up offices in remitting countries and facilitate fund remittances, especially in the U.S., to help reduce the expense of remitting funds.

¶19. (SBU) The Philippines also has over 5000 non-government organizations (NGOs) that do not fall under the requirements of the AMLA. Charitable and non-profit entities are not required to make covered or suspicious transaction reports. The SEC provides limited regulatory control over the registration and operation of NGOs. These entities are rarely held accountable for failure to provide year-end reports of their activities, and there is no consistent accounting and verification of their financial records. Because of their ability to circumvent the usual documentation and reporting requirements imposed on banks for financial transfers, NGOs could be used as conduits for terrorist financing without detection. The AMLC is aware of the problem and is working to bring charitable and not-for-profit entities under the interpretation of the amended implementing regulations for covered institutions.

¶20. (SBU) The GRP has not ensured sufficient funding to expand and enhance human resources applied to combat money laundering and terrorist financing. The GRP's budget request for 2006 slashed funds for AMLC overhead and operations from 24 million pesos (\$450,000) to just 10 million pesos (\$200,000). This will cut AMLC's funding for training, travel, and utilities such as phone and electricity. Without sufficient funding, AMLC will be unable to equip and train law enforcement and regulatory personnel properly. As AMLC seeks to expand its workforce to take on new projects, its limited resources will prevent building capacity for better oversight and investigation.

¶21. (SBU) Through the Special Economic Zone Act, the Philippine Economic Zone Authority (PEZA) oversees and manages most of the country's special economic zones, also referred to as ecozones. These ecozones may allow goods and raw materials to be unloaded for immediate transshipment, or stored, sorted, packed, refined, or manufactured for later export without being subject to import taxes. PEZA currently oversees 246 registered ecozones located throughout the Philippines - 134 private and public export processing zones, 96 information technology parks, and 16 tourism zones.

¶22. (SBU) In addition, there are special economic zones located inside the former U.S. military bases in the Philippines, notably the Subic Bay Freeport (SBF), the Clark Special Economic Zone (CSEZ), and Camp John Hay in Baguio. These ecozones are independent of PEZA, subject to legislation under the Bases Conversion Development Authority (BCDA), and managed as separate customs territories. The Subic Bay Metropolitan Authority (SBMA) is the operational arm of the Philippine Government in developing the Subic Bay Freeport while the Clark Development Corporation manages the CSEZ. There are two other ecozones administered outside the jurisdiction of PEZA: the Cagayan Economic Zone in northern Mindanao and the Zamboanga Freeport in southwest Mindanao. Each authority is responsible for ensuring that all business entities inside its ecozone abide by the regulations governing its establishment and operation.

¶23. (SBU) To register and locate in an ecozone, a company must meet stringent standards and submit substantial documentation to prove it is a legitimate business entity. Once all the application forms are provided and other requirements met, the company is screened and evaluated by the respective zone authority. When the evaluation is concluded and the registration application is endorsed, the authority's Board of Directors decides whether the company is entitled to locate in an ecozone. Individuals working in an ecozone enterprise must obtain and carry proper identification cards at all times.

¶24. (SBU) Individual entities in the ecozones and the

governing authorities are not covered under the AMLA. However, financial exchanges within the ecozone going through the local banking system would be captured in that institution's transaction reports to the AMLC. Smuggling is rampant in the Philippines. Although the ecozone authorities are generally on the lookout for smuggled goods, there is widespread concern that many of the goods entering the country illegally or undetected originally arrive at one of the ecozones adjacent to a seaport. Many of these goods are then sold at black markets in the country. Authorities require the enterprises located in their ecozones to submit monthly and quarterly reports on their sales and production. The respective ecozone authority that would have jurisdiction over them investigates companies who have questionable operations and who may be engaged in suspicious activities.

End Text.

Jones